

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

SUMNER SQUARE  
1615 M STREET, N.W.  
SUITE 400  
WASHINGTON, D.C. 20036-3209

(202) 326-7900  
FACSIMILE:  
(202) 326-7999

January 8, 2009

FILED/ACCEPTED

JAN - 8 2009

Federal Communications Commission  
Office of the Secretary

*Via Hand Delivery*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

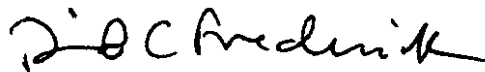
Re: *In the Matter of TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network, et al., MB Docket No. 08-214*

Dear Ms. Dortch:

Please find enclosed the original and four copies of Response of Complainant TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network to Defendants' Supplemental Notice to be filed in the above-captioned docket.

Please feel free to contact me if you have any questions.

Respectfully submitted,



David C. Frederick

Enclosures

No. of Copies rec'd 0+4  
List ABCDE

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

ORIGINAL

|                                            |   |                      |
|--------------------------------------------|---|----------------------|
| In the Matters of                          | ) | MB Docket No. 08-214 |
|                                            | ) |                      |
| Herring Broadcasting, Inc. d/b/a WealthTV, | ) | File No. CSR-7709-P  |
| Complainant                                | ) |                      |
| v.                                         | ) |                      |
| Time Warner Cable Inc.                     | ) |                      |
| Defendant                                  | ) |                      |
|                                            | ) |                      |
| Herring Broadcasting, Inc. d/b/a WealthTV, | ) | File No. CSR-7822-P  |
| Complainant                                | ) |                      |
| v.                                         | ) |                      |
| Bright House Networks, LLC,                | ) |                      |
| Defendant                                  | ) |                      |
|                                            | ) |                      |
| Herring Broadcasting, Inc. d/b/a WealthTV, | ) | File No. CSR-7829-P  |
| Complainant                                | ) |                      |
| v.                                         | ) |                      |
| Cox Communications, Inc.,                  | ) |                      |
| Defendant                                  | ) |                      |
|                                            | ) |                      |
| Herring Broadcasting, Inc. d/b/a WealthTV, | ) | File No. CSR-7907-P  |
| Complainant                                | ) |                      |
| v.                                         | ) |                      |
| Comcast Corporation,                       | ) |                      |
| Defendant                                  | ) |                      |
|                                            | ) |                      |
| TCR Sports Broadcasting Holding, L.L.P.,   | ) | File No. CSR-8001-P  |
| d/b/a Mid-Atlantic Sports Network,         | ) |                      |
| Complaint                                  | ) |                      |
| v.                                         | ) |                      |
| Comcast Corporation,                       | ) |                      |
| Defendant                                  | ) |                      |

FILED/ACCEPTED

JAN - 8 2009

Federal Communications Commission  
Office of the Secretary

To: The Commission

**RESPONSE OF COMPLAINANT TCR SPORTS BROADCASTING HOLDING, L.L.P.  
D/B/A MID-ATLANTIC SPORTS NETWORK TO DEFENDANTS' SUPPLEMENTAL  
NOTICE**

TCR Sports Broadcasting Holding, L.L.P, doing business as Mid-Atlantic Sports Network ("MASN"), hereby files this response to the Supplemental Notice in Support of Emergency Motion for Stay and Emergency Application for Review filed on January 7, 2009 by Defendants Comcast Corporation, Time Warner Cable Inc., Cox Communications, Inc., and Bright House Networks, LLC (collectively, "Defendants"). In the Supplemental Notice, Defendants inform the Commission (at 2) that Chief ALJ Sippel has "continue[d] to assert jurisdiction over these proceedings" based on a January 6, 2009 order<sup>1</sup> in which the ALJ claimed that his previous scheduling order "deserve[d] compliance." Defendants argue (at 4) that this *ultra vires* assertion of authority "present[s] the strongest possible case for an immediate stay" of the Media Bureau's *Jurisdiction Order*, which held that the ALJ's authority over these matters had expired.<sup>2</sup>

Defendants are wrong for multiple reasons. First, Defendants fail to inform the Commission that it was *Defendants* that urged the ALJ to commit legal error by inviting him to treat the Media Bureau's *Jurisdiction Order* as a "nullity." Separate Statement of Bright House Networks, LLC in Support of Motion for Reaffirmation of Scheduling Order at 2 (filed Dec. 31, 2008); *see* Motion for Reaffirmation of Scheduling Order or, In the Alternative, Request for Certification of an Application for Review (filed Dec. 30, 2008). Despite having filed an Emergency Application for Review and Motion for Stay with this Commission – typically the proper means for reviewing a bureau decision (although, here, the Application seeks improper

---

<sup>1</sup> Order, FCC 09M-01 (ALJ rel. Jan. 6, 2009).

<sup>2</sup> Memorandum Opinion and Order, DA 08-2805 (MB rel. Dec. 24, 2008) ("*Jurisdiction Order*").

interlocutory review) – Defendants took the extraordinary step of encouraging Chief ALJ Sippel to defy the terms of the *Jurisdiction Order* and to assert continuing authority over these proceedings, just as Defendants had urged the ALJ to commit error by disregarding the mandatory deadline in the *HDO*.<sup>3</sup> Having encouraged the ALJ to assert authority over these cases and thereby creating what Defendants themselves call (at 3) the “administrative spectacle” of a subordinate official pushing forward with a proceeding that a bureau of this Commission has declared expired, Defendants’ reliance on this “spectacle” as a basis for staying the *Bureau’s* order is astonishing.

Second, and independently, Defendants are wrong (at 3) that a risk of “parallel, conflicting” proceedings is a basis for staying the *Jurisdiction Order*. To begin with, in response to Chief ALJ Sippel’s order, MASN (as well as WealthTV), as a courtesy, filed a status report on January 7, 2009 stating that the *Jurisdiction Order* conclusively held that proceedings before the ALJ had expired. *See* Joint Status Report of TCR Sports Broadcasting, L.L.P. d/b/a Mid-Atlantic Sports Network and Herring Broadcasting, Inc. d/b/a WealthTV (filed Jan. 7, 2009). MASN further explained that the Bureau’s determination is binding on the parties, as well as the ALJ, and that the ALJ does not sit in review of a decision of a bureau of this Commission. MASN and WealthTV thus made clear that they would not participate in any further proceedings

---

<sup>3</sup> As MASN explained in its Joint Opposition to Emergency Application for Review (filed Jan. 6, 2009) and Joint Opposition to Motion for Stay (filed Jan. 6, 2009), the Bureau’s conclusion in the *Jurisdiction Order* that the ALJ’s delegated authority had expired is well-supported. *See* Memorandum Opinion and Order, DA 08-2269, ¶ 124 (MB rel. Oct. 10, 2008), as modified by *erratum* adopted and released October 15, 2008 (“*HDO*”) (imposing mandatory deadline on issuance of a recommended decision by the ALJ).

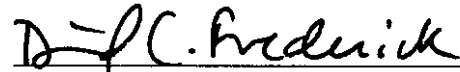
before the ALJ unless and until directed to do so by this Commission. The prospect of parallel and conflicting proceedings involving MASN and WealthTV is therefore extremely remote.<sup>4</sup>

Furthermore, the risk of “parallel” and “conflicting” proceedings supports promptly rejecting, not granting, Defendants’ Motion for Stay. Were this Commission to grant Defendants’ Motion for Stay in these circumstances, it would sanction Defendants’ end-run around the appropriate review process for bureau decisions and Defendants’ efforts to draw into conflict various arms of this Commission. It would also sanction the ALJ’s express defiance of *two* orders of this Commission’s bureaus. The Commission has an obvious institutional interest in avoiding rewarding or condoning such conduct. Instead, the Commission can and should address the risk of parallel and conflicting proceedings by promptly *denying* Defendants’ Motion for Stay (as well as Defendants’ Application for Review), sending the unequivocal message to all parties that this Commission will not condone its administrative hearing officials openly disregarding the mandates of this Commission’s bureaus when acting under the delegated authority of the Commission. *See* 5 U.S.C. § 556(c); 47 U.S.C. § 155(c).

---

<sup>4</sup> Defendants suggest in their Supplemental Notice (at 3) that the *Jurisdiction Order* has not “go[ne] into effect.” They offer no support for this bald assertion, which is understandable because it is wrong. *See* 47 U.S.C. § 155(c)(3) (a bureau order has the force and effect of law unless this Commission’s grants an application for review of that order). Defendants’ abandonment of discovery schedules in the wake of the *Jurisdiction Order* and their prompt filing of a Motion for Stay of that order demonstrate that Defendants themselves understand the *Jurisdiction Order* has “go[ne] into effect.”

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "D.C. Frederick", is written over a horizontal line.

David C. Frederick

Evan T. Leo

Kelly P. Dunbar

David F. Engstrom

Kellogg, Huber, Hansen, Todd,

Evans & Figel, P.L.L.C.

1615 M Street N.W., Suite 400

Washington, D.C. 20036

(202) 326-7900

January 8, 2009

*Attorneys for TCR Sports Broadcasting Holding, L.L.P.*

## **CERTIFICATE OF SERVICE**

I, David C. Frederick, hereby certify that, on January 8, 2009, copies of the foregoing document were served as follows:

### ***Via Hand Delivery and Electronic Mail***

Monica Desai (monica.desai@fcc.gov)  
Chief, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Matthew Berry (matthew.berry@fcc.gov)  
General Counsel  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

The Honorable Richard L. Sippel  
(richard.sippel@fcc.gov)  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

The Honorable Arthur L. Steinberg  
(arthur.steinberg@fcc.gov)  
Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Kris Anne Monteith (kris.monteith@fcc.gov)  
Gary P. Schonmann (gary.schonman@fcc.gov)  
Elizabeth Mumaw (elizabeth.mumaw@fcc.gov)  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

### ***Via First-Class and Electronic Mail***

Jonathan D. Blake (jblake@cov.com)  
Gregg H. Levy (glevy@cov.com)  
James M. Garland (jgarland@cov.com)  
Sarah L. Wilson (swilson@cov.com)  
Robert M. Sherman (rsherman@cov.com)  
Covington & Burling LLP  
1201 Pennsylvania Avenue, NW  
Washington, D.C. 20004

J. Christopher Redding  
(credning@dowlohn.com)  
David E. Mills (dmills@dowlohn.com)  
Jason E. Rademacher  
(jrademacher@dowlohn.com)  
Dow Lohnes PLLC  
1200 New Hampshire Avenue, NW, Suite 800  
Washington, D.C. 20036

Jay Cohen (jaycohen@paulweiss.com)  
Henk Brands (hbrands@paulweiss.com)  
Samuel E. Bonderoff  
(sbonderoff@paulweiss.com)  
Paul Weiss Rifkind Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10011

Arthur H. Harding (aharding@fh-law.com)  
Seth A. Davidson (sdavidson@fh-law.com)  
Micah M. Caldwell (mcaldwell@fh-law.com)  
Fleischman and Harding LLP  
1255 23<sup>rd</sup> Street, NW, 8<sup>th</sup> Floor  
Washington, D.C. 20037

Arthur J. Steinhauser (asteinhauer@sbandg.com)  
Cody Harrison (charrison@sbandg.com)  
Sabin Bermant & Gould LLP  
Four Times Square  
New York, NY 10036

R. Bruce Beckner (bbeckner@fh-law.com)  
Mark B. Denbo (mdenbo@fh-law.com)  
Rebecca E. Jacobs (rjacobs@fh-law.com)  
Fleishman and Harding LLP  
1255 23<sup>rd</sup> Street, NW, 8<sup>th</sup> Floor  
Washington, D.C. 20037

James L. Casserly (jcasserly@willkie.com)  
Michael H. Hammer (mhammer@willkie.com)  
Willkie Farr & Gallagher LLP  
1875 K Street, NW  
Washington, D.C. 20006

David H. Solomon (dsolomon@wbklaw.com)  
L. Andrew Tollin (atollin@wbklaw.com)  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW, Suite 700  
Washington, D.C. 20037

Michael P. Carroll (michael.carroll@dpw.com)  
David B. Toscano (david.toscano@dpw.com)  
Davis Polk & Wardwell  
450 Lexington Avenue  
New York, NY 10017

Kathleen Wallman (wallmank@wallman.com)  
Kathleen Wallman, PLLC  
9332 Ramey Lane  
Great Falls, VA 22066

Geoffrey M. Klineberg (gklineberg@khhte.com)  
Priya R. Aiyar (paiyar@khhte.com)  
Derek T. Ho (dho@khhte.com)  
Kellogg, Huber, Hansen, Todd,  
Evans & Figel, P.L.L.C.  
1615 M Street, N.W.  
Washington, D.C. 20036

  
David C. Frederick